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August 22, 2002

VIA ELECTRONIC FILING

Ms. Marlene Dortch
Secretary
Federal Communications Commission
The Portals
445 12th Street SW
Washington DC 20554

Re: CC Dockets No. 96-45, 98-171, 90-571, 92-237, 99-200, 96-116, 98-170, 02-33,
95-20, 98-10 and NSD File No. L-00-72.

Dear Ms. Dortch:

On August 21, 2002, Whit Jordan (of BellSouth), David Hostetter, Jeff Brueggeman, and I (all on behalf of SBC Communications) met with Diane Law Hsu, Acting Deputy Chief - Telecommunications Access Policy Division, Wireline Competition Bureau, and Katherine Tofigh and Cara Voth of the Wireline Competition Bureau. The purpose of the meeting was to discuss the joint proposal by SBC and BellSouth to reform the method by which universal service contributions are assessed on carriers and recovered from end users. In particular, we discussed the legal and policy reasons why the Commission should exercise its discretionary authority to assess contributions directly on ISPs, regardless of facilities ownership. Both Congress and the Commission have recognized that information services are provided via telecommunications. There is also precedent for treating an ISP as a "provider of telecommunications." In the *Non-Accounting Safeguards Order*, the Commission concluded that the statutory definition of "interLATA service" — which is "telecommunications between a point in a [LATA] and a point located outside such area" — is not limited to telecommunications services because information services are provided "via telecommunications."¹ It therefore held that a BOC's interLATA information services fall within the statutory definition of an "interLATA service." In so holding, the Commission effectively determined that the provision of an interLATA information service constitutes the provision of telecommunications. Likewise, an ISP that provides broadband Internet access via telecommunications should be deemed a "provider of telecommunications" for purposes of section 254(d).

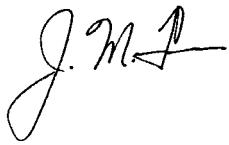
We also discussed the need for the Commission to take immediate action to address the disparity in the assessment of universal service contributions on wireline broadband Internet access services compared to cable modem and other competing services. The best way to achieve

¹ *Implementation of Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended*, CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905, ¶ 56 (1996).

regulatory parity is for the Commission to immediately include all broadband Internet access services in the contribution base. This can be accomplished by addressing the universal service issues raised in the *Wireline Broadband* proceeding in conjunction with the *Universal Service Contribution* proceeding. The Commission can take action to include all broadband Internet access services in the universal service contribution base *before* it completes its consideration of the proper classification and regulatory framework for broadband Internet access services. In the alternative, the Commission should provide interim relief by declaring that wireline broadband Internet access services are not subject to a contribution obligation. There is a sufficient basis in the record of the *Universal Service Contribution* proceeding for the Commission to grant such interim relief.

In accordance with Section 1.1206 of the Commission's rules, this letter and the attached are being filed in each of the above referenced dockets via the Commission's ECFS system. Should you have any questions regarding the attached, please do not hesitate to contact me by whatever means are most convenient for you.

Sincerely,

A handwritten signature in black ink, appearing to read "J. M. F.", with a stylized flourish at the end.

Attachments

Cc: Diane Law Hsu
Katherine Tofigh
Cara Voth

ISPs Should Contribute Directly

- The distinction between facilities-based and non-facilities ISPs is illusory. Many ISPs that purchase broadband Internet access services also own interstate transport facilities.
- The Commission has the discretionary authority under section 254(d) to assess USF contributions directly on ISPs because they are providers of telecommunications.
 - » The Commission has repeatedly recognized that information services are “provided via telecommunications.”
 - » Unlike a business customer, an ISP provides telecommunications to retail end users as a component of its Internet access service.
 - » ISPs should continue to be treated as information service providers rather than carriers because their end-user customers are paying for a bundled information service that includes a telecommunications component.
- Assessment of universal service contributions directly on ISPs does not equate to regulation of the Internet. Most ISPs already contribute indirectly to universal service.

All Broadband Services Should Contribute

- It would be nonsensical for the Commission to adopt a policy that only those services that receive universal service support are required to fund the program.
 - » Many services generate universal service contributions even though they do not receive support.
 - » As with private networks, all broadband providers (including cable operators) benefit from being able to establish connections with end users that access the Internet via connections that are supported by universal service.
- Broadband Internet access services increasingly are used to provide services that are substitutes for, and are direct competitors with, traditional telecommunications services.
 - » Exclusion of broadband Internet access services creates competitive distortions.
 - » As the Commission has recognized, migration of traditional services to broadband platforms has significant implications for the preservation and advancement of universal service.

Immediate Action Needed on Broadband Services

- The best way to achieve regulatory parity is to immediately include all competing broadband Internet access services in the contribution base.
- In the alternative, the Commission should provide interim relief by declaring that wireline broadband Internet access services are not subject to a contribution obligation.
 - » Under the Commission's current rules, there is no justification for continuing to assess a contribution on a wireline provider's own integrated broadband Internet access services.
 - » The Commission held in the *Bulk Services Order* that broadband Internet access service provided to an ISP is not a retail service because the ISP is not the ultimate end user.
 - » The Commission should clarify that, for universal services purposes, an ISP is not an end user when it purchases broadband Internet access services from a wireline provider.

Primary Concerns with the Existing Mechanism

- Current contribution base is not broad enough to capture technology changes or market realities. Interstate telecommunications activity is not decreasing, but *covered* revenues may be.
- Current contribution mechanism distorts competition.
 - » DSL has a 7 percent price disadvantage compared to cable modem and other competing services.
 - » Internet telephony and information services that provide e-mail and instant messaging are replacing traditional interstate telecommunications services, but are not included in the contribution base.
 - » CLECs and other non-dominant providers have *total* pricing freedom to control whether any revenues are declared interstate and to determine how USF recovery charges are assessed.
- Customer demands for service bundling will continue to grow and are not easily accommodated by the current mechanism or the use of safe harbors.

SBC BellSouth *Joint Proposal*

- Assesses a flat contribution on every retail service an end user purchases that provides interstate telecommunications capability. Includes packet services and services to access the Internet, which is a type of public network.
 - » All universal service contributions are applied *directly* based on a service provider's retail relationships, rather than indirectly based on wholesale relationships.
 - » The Commission should conclude that an information service provider is a *provider of interstate telecommunications* when it offers an information service.
 - » Contributions are assessed on information services regardless of facilities ownership. This reduces the likelihood of regulatory arbitrage that may occur if information services are not comparably assessed.
 - » Customers are generally accustomed to paying charges that depend on the number of services purchased and the number of retail relationships established.

SBC BellSouth *Joint Proposal*

- Assesses separate contribution charges for the access component and the interstate transport component of each distinct service.
 - » Reflects market reality that customers may purchase services from multiple providers or bundled service from a single provider.
 - » Assesses an equivalent contribution regardless of whether the access component and interstate transport component are purchased separately or as a bundle.
 - » Competitively neutral because it treats wireline services, wireless services and information services in a comparable manner.
 - » Providers are able to calculate their contributions based upon information they use to bill their customers for the services purchased.

SBC BellSouth *Joint Proposal*

- Bases contributions on the number and capacity of retail services provided to end user customers.
 - » Higher bandwidth services generate a larger contribution because they represent more interstate telecommunications activity.

One-way paging = 1/2	Services \leq 64 Kbps = 1
Asymmetrical \leq 6 Mbps = 1	Services $>$ 64 Kbps, $<$ 1.544 Mbps = 2
Asymmetrical $>$ 6 Mbps = 2	Services \geq 1.544 Mbps, $<$ 45 Mbps = 5
Centrex \leq 64 Kbps = 1/9	Services \geq 45 Mbps = 40
 - » Interstate service providers enjoying the most success in the marketplace *and their customers* provide the most support to universal service.

SBC BellSouth *Joint Proposal*

- Establishes a uniform line item USF recovery charge.
 - » Providers may recover their contributions only from their end user customers.
 - » An explicit USF recovery charge is still permissive. However, if a provider elects to recover its contributions through an explicit line item charge, it must do so for all types of end user customers. “All or nothing” application of the line item charge limits gaming and competitive manipulation of the charge.
 - » The line item charge *must* be equal to the contribution factor.
 - » The contribution factor should include a safe harbor that allows providers to recover a reasonable amount for uncollectibles and administrative costs. A provider deducts the safe harbor from the total billed contribution amount before submitting its contribution to USAC.

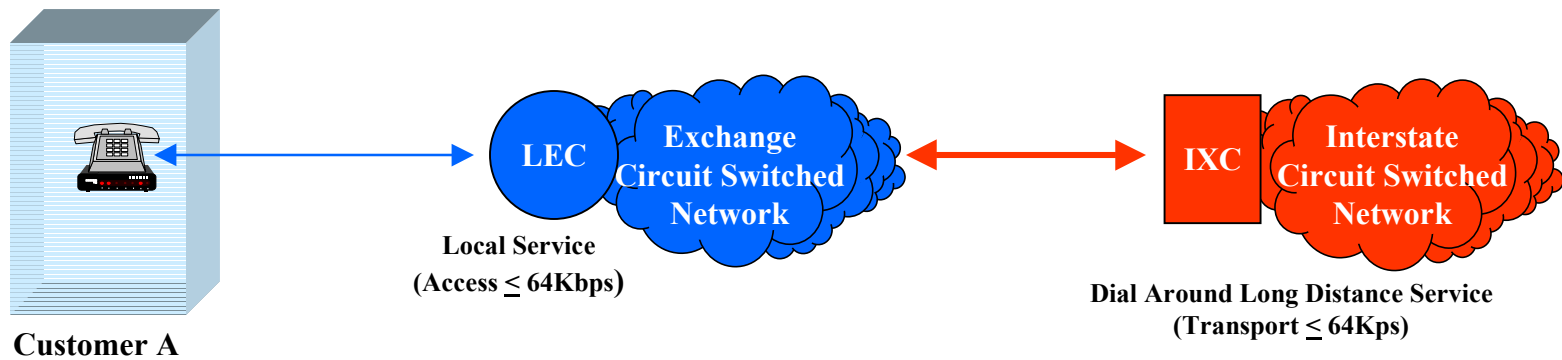
Benefits of the SBC BellSouth *Joint Proposal*

- Expands the contribution base, which enhances the stability of the fund. An expanded contribution base is less sensitive to technology changes and reduces the likelihood that customers will migrate to services that do not contribute.
- Minimizes the burden imposed on any particular category of provider or type of customer. Customers can control their USF recovery charges through their purchasing decisions.
- Eliminates artificial competitive advantage of broadband and information services.
- No need to address whether IP telephony and other new services are telecommunications services for universal service contribution purposes.
- No need to cap the residential contribution because the proposed funding mechanism spreads contributions across the maximum number of retail services that provide interstate telecommunications capability.

The CoSUS Proposal Is Bad Public Policy

- The CoSUS proposal is unlawful. Allowing IXC's to contribute on a *de minimis* amount of the interstate telecommunications services they provide is not equitable and nondiscriminatory, as required by section 254(d).
- The CoSUS proposal does not provide a stable contribution base and sidesteps one of the most important universal service issues facing the Commission – the rapid migration of customers to new technologies that are not included in the funding base.
- The CoSUS proposal creates a new implicit subsidy by capping the contribution assessed on residential customers and relying upon business customers to pay for the residual. This repeats the two most significant PICC design flaws — class of service distinctions and an artificial cap on the charges.
- The CoSUS proposal unfairly burdens LEC customer relationships. Historically, IXC's were the sole interstate contributors to universal service. Yet IXC's now claim that *any* contribution responsibility for their interstate long distance services is unacceptable.

Diagram 1



Customer A — Services Purchased

Local Service (Access ≤ 64Kbps)

Dial Around Long Distance Service (Transport ≤ 64Kps)

Contribution Assessment

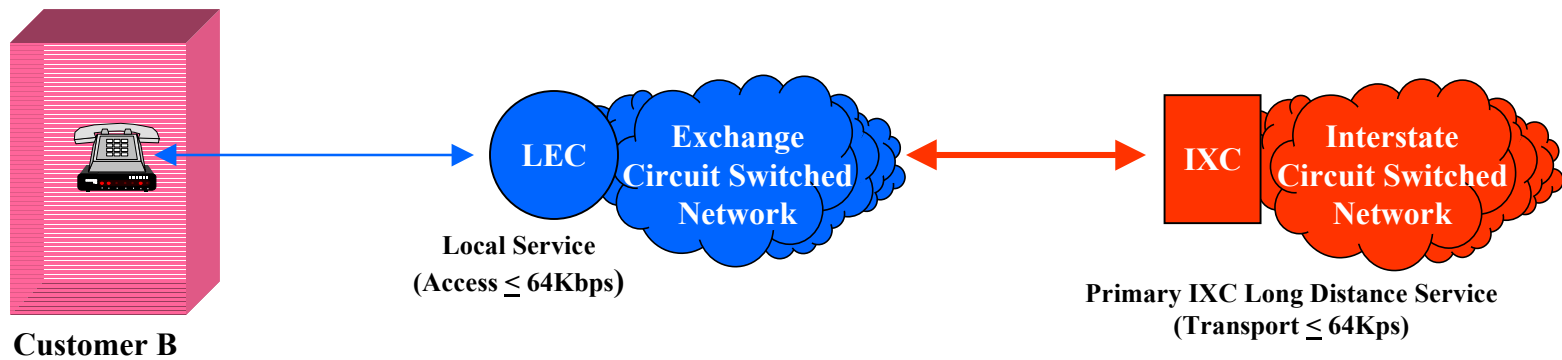
LEC = \$.55 (NOTE)

IXC = Assessed if used

Total assessments = \$.55

NOTE: Preliminary estimates based on 2001 data produce a charge in the range of \$.50 - \$.55.

Diagram 2



Customer B — Services Purchased

Local Service (Access \leq 64Kbps)

Primary IXC Long Distance Service (Transport \leq 64Kps)

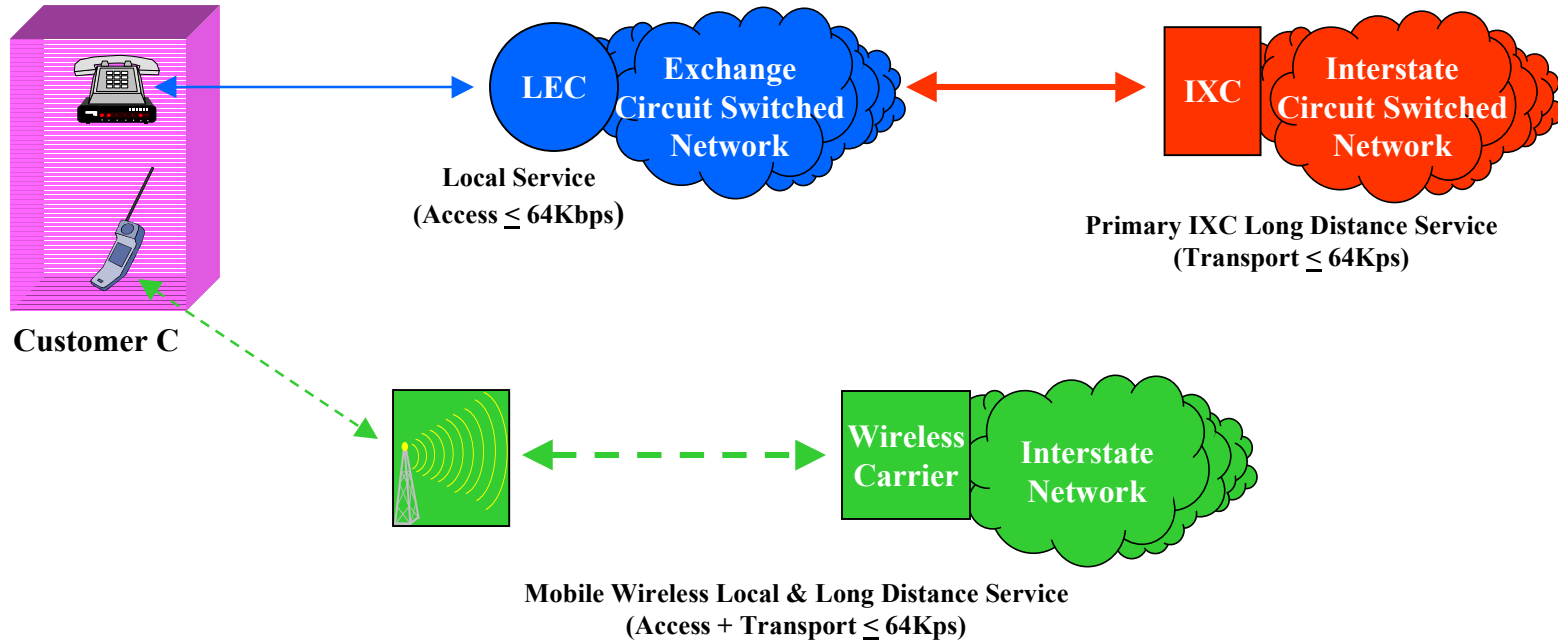
Contribution Assessment

LEC = \$.55

IXC = \$.55

Total assessments = \$1.10

Diagram 3



Customer C — Services Purchased

Local Service (Access $\leq 64\text{Kbps}$)

Primary IXC Long Distance Service (Transport $\leq 64\text{Kps}$)

Mobile Wireless Service (Access + Transport $\leq 64\text{Kps}$)

Contribution Assessment

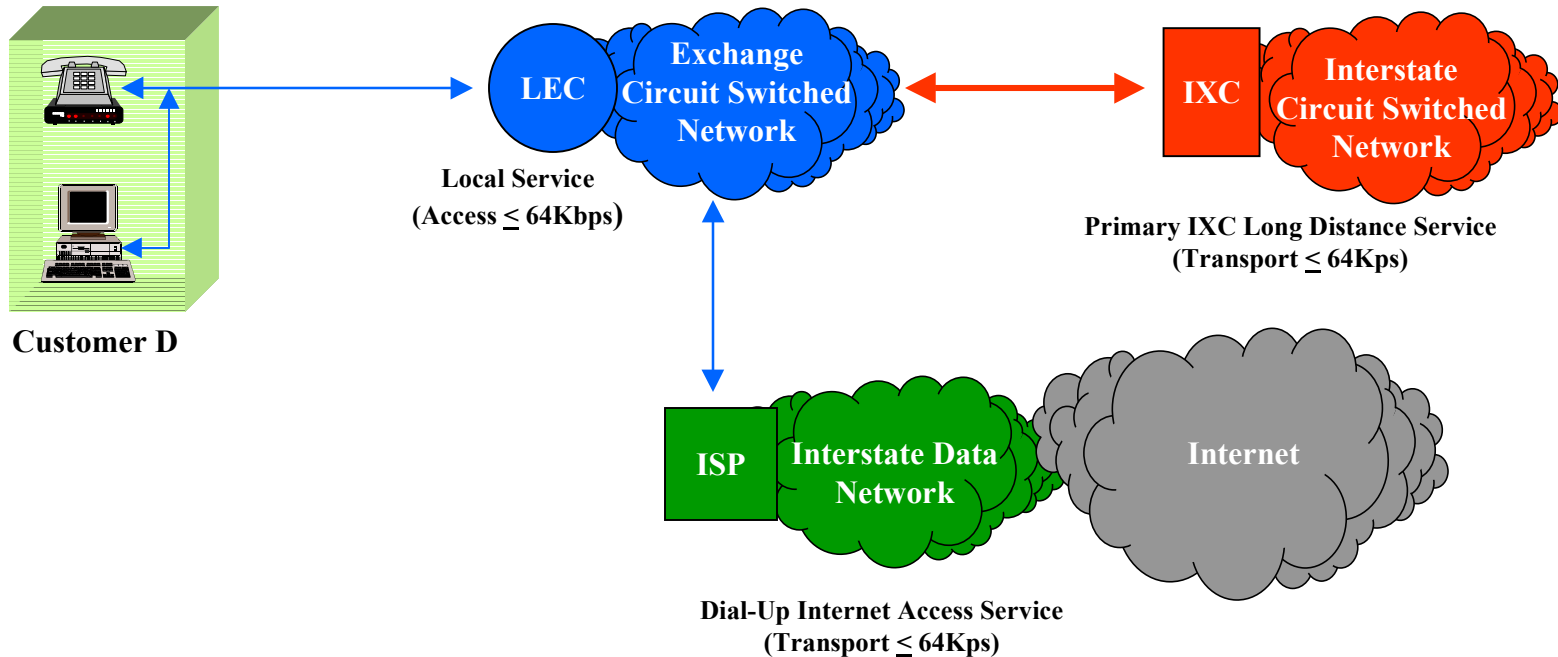
LEC = \$.55

IXC = \$.55

Wireless carrier = \$1.10

Total assessments = \$2.20

Diagram 4



Customer D — Services Purchased

Local Service (Access ≤ 64Kbps)

Primary IXC Long Distance Service (Transport ≤ 64Kbps)

Dial-Up Internet Access Service (Transport ≤ 64Kbps)

Contribution Assessment

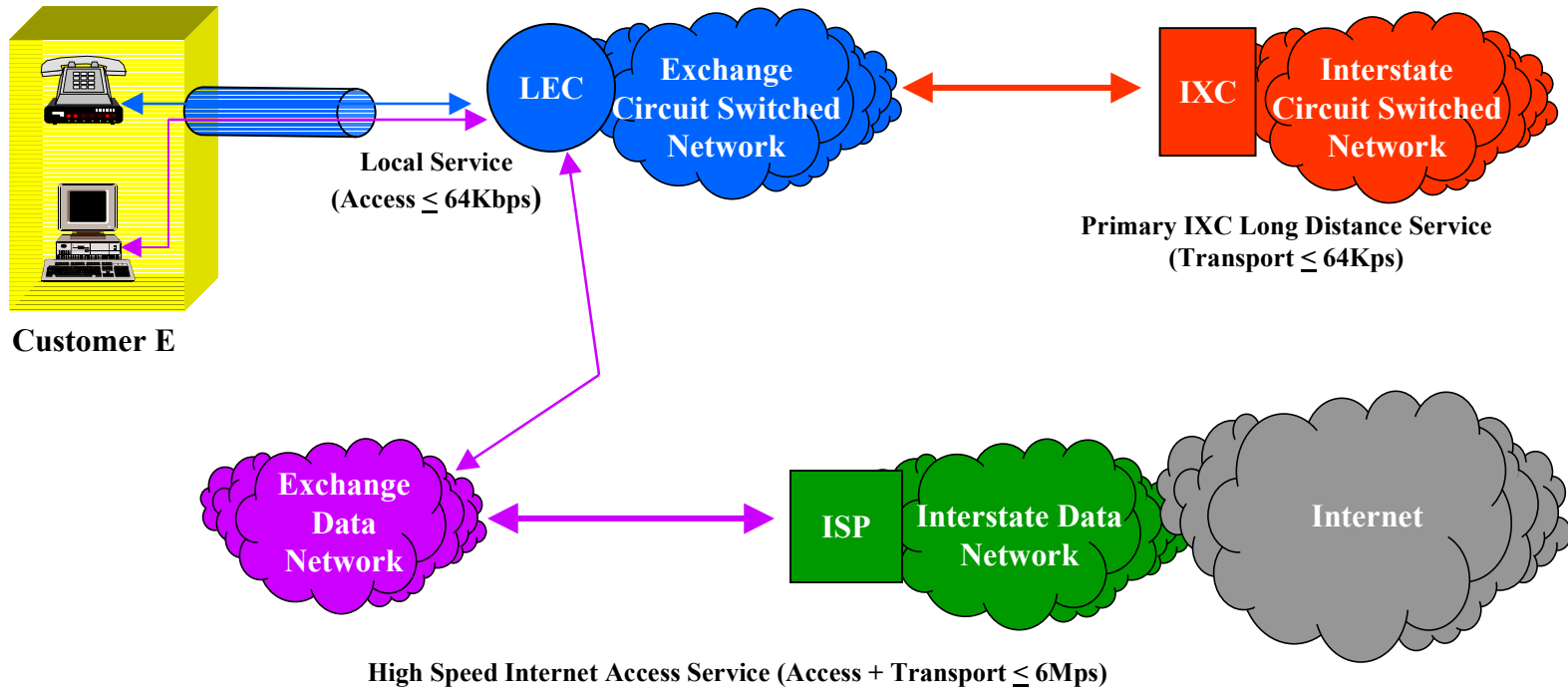
LEC = \$.55

IXC = \$.55

ISP = \$.55

Total assessments = \$1.65

Diagram 5



Customer E — Services Purchased

Local Service (Access $\leq 64\text{Kbps}$)

Primary IXC Long Distance Service (Transport $\leq 64\text{Kps}$)

High Speed Internet Access Service (Access + Transport $\leq 6\text{Mps}$)

Contribution Assessment

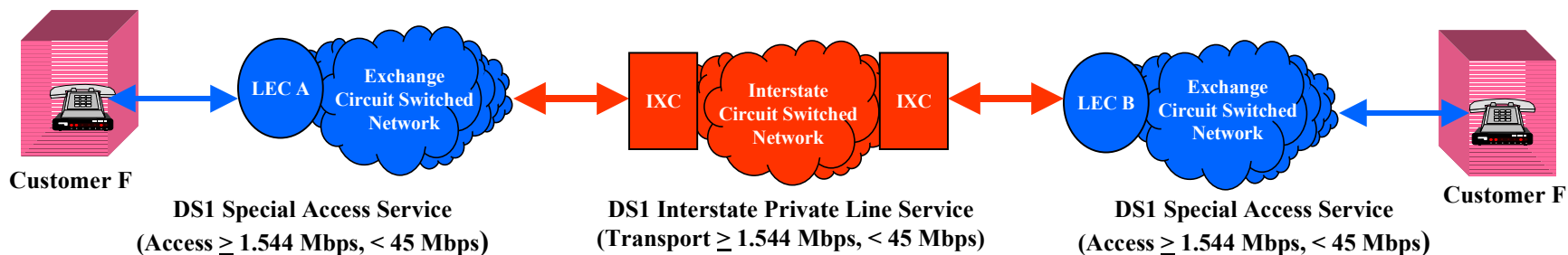
LEC = \$.55

IXC = \$.55

ISP = \$1.10

Total assessments = \$2.20

Diagram 6



Customer F — Services Purchased

DS1 Special Access (Access ≥ 1.544 Mbps, < 45 Mbps)

DS1 Interstate Private Line Service (Transport ≥ 1.544 Mbps)

Contribution Assessment

LEC A = \$2.75

LEC B = \$2.75

IXC = \$2.75

Total assessments = \$8.25